IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/08/2003

CORAM

THE HONOURABLE MR. JUSTICE V.KANAGARAJ

Crl.O.P.No.23520 of 2001
AND
CRL.M.P.Nos.8048 & 8049 OF 2001

N.P. Veerasamy ... Petitioner

-Vs-

1.State of Tamil Nadu
Rep. by the Home Secretary,
Fort st.George,
Chennai.

2.The Additional Superintendent
of Police & Chief Investigation
Officer, SIT CB CID,
Coimbatore Camp at Dharmapuri.

3.D.K.Rajendran
4.Nedu @ Nedunchezhian
5.Madhu @ Ravindran
6.C.Muniappan
7.D.K.Murugesan
8.D.A.Dowlath Badsha
9.M.Velayutham
10.M.Muthu @ Arivalagan
11.K.Ravi @ AIADMK Ravi
12.V.Murugan
13.A.P.Murugan
14.M.Vadivel
15.Sampath
16.M.Nanjan @ Nanjappan
17.S.Palanisamy
18.K.Raju
19.P.Mani @ Tailor Mani
20.G.Madhu @ Athumedu Madhu
21.T.Raman
22.C.Shanmugam
23.K.Chandran
24.R.Chellakutti
25.M.Kaveri @ Kaveri Maesthary

26.K.Mani @ Member Mani
27.Mathayan @ cycle Shop Mathayan
28.R.Selvam
29.A.Madesh @ Madesh Maesthary
30.C.Selvaraj
31.Manickam
32.K.Veeramani
33.Udayakumar ... Respondents

(The second respondent is substituted
in the place of the
Superintendent of Police,
CBCID, Dharmapuri
as per the order of this Court
dated 18.1.2002 made in
Crl.M.P.No.93 of 2002)

(Respondents 3 to 33 are impleaded as
per the order of the Court dated
22.8.2003 made in Crl.M.P.No.9123/2001)

Petition filed under Section 407 of the Criminal Procedure Code for
the relief as stated therein.

!For petitioner :Mr.R.Viduthalai

^For R.1&R.2 : Mr.K.Abudukumar Rajarathinam
Government Advocate
(Criminal Side)

For R.3 to R.33 : Mr.S.Shunmugavelayutham

:O R D E R

The petitioner who is the father of Selvi V.Kokilavani one of
the three victims of the incident widely known as Dharmapuri bus burning
incident, has filed the above Criminal Original Petition praying to transfer
the case in S.C.No.118 of 2000 from the Court of I Additional Sessions Judge,
Dharmapuri at Krishnagiri to a Court having competent jurisdiction at
Coimbatore District.

2. The petitioner would submit that his daughter Kokilavani
and two others namely, Hemalatha and Gayathri were burnt alive and died on the
spot while they were travelling in their college bus on an educational tour at
Illakiyampatti in Dharmapuri District on 2.2.2000; that there were wide spread
untoward incidents through out the State when J. Jayalalitha was convicted
and sentenced to imprisonment by the Special Court in Pleasant Stay Hotel's
case and her party men started indulging in unruly activities joining hands
with anti-social elements and one such incident was the burning of the bus in
which the three girls who were travelling along with their college mates were

burnt alive.

3. The petitioner would further submit that thirty one persons have been arrayed as accused having been charged for offences punishable under Sections 147, 148, 149, 341, 342, 302, 307 and 114 of IPC along with Sections 3 and 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act 1992; that all the accused are either office bearers or holding some post or the other at the District level or town level in Dharmapuri District; that The AIADMK party is the present ruling party in the State; that the trial of the case commenced on 5.11.200 1 and 22 witnesses were examined on the side of the prosecution and all including the V.A.O, who is the complainant, have turned hostile in an unprecedented manner; that in the circumstances prevailing at Krishnagiri, within the borders of Dharmapuri District, no fair and impartial trial could be held and the case has to be transferred to a competent Court at Coimbatore; that the accused in the case are mostly AIADMK functionaries and party activists and the State, which is the prosecutor in the present case, is run by the Government of AIADMK party and therefore for speedy, free and fair trial to be held, the transfer of the trial of the said case from the District of Dharmapuri is quite imminent and inevitable; that out of 331 persons cited as witnesses, more than 250 are residing at Coimbatore; that the accused are all the residents of Dharmapuri and the students who travelled in the bus being the students of Agricultural University, Coimbatore, most of them live in and around Coimbatore town and therefore the atmosphere would be congenial for a fair and free trial to be held at Coimbatore wherein, the witnesses cannot be tampered with. On such averments, the petitioner would pray:
(i) to transfer the case from the Court of the I Additional Sessions Judge, Dharmapuri at Krishnagiri to a competent Court in Coimbatore District; and
(ii) to appoint an independent Public Prosecutor to conduct the trial of the case de novo and to pass such other orders that this Court deems fit and proper.

4. In the counter affidavit filed by the State besides admitting the averments contained in paragraphs 1 to 5 in the affidavit of the petitioner, they would deny the allegation that the State may not prosecute the case in a fair manner, as not based on valid grounds; that the witnesses so far examined are not eye-witnesses; that for the witnesses turning hostile, the State cannot be blamed; that despite their best efforts, the witnesses did not support the case of the prosecution for which no malice could be attributed to the State. The counter affidavit would deny that in the prevailing circumstances, it is impossible to conduct the case in the present Court; that appointing a special Public Prosecutor of sufficient standing, they conduct the proceedings on behalf of the State.

5. Hoping that the other set of witnesses who are the eyewitnesses may not resile or deviate from the statements recorded and that they will be in a position to establish the major charges under Sections 302 and 307 IPC, these respondents would pray to pass appropriate orders on this petition.

6. In the counter affidavit filed by the first accused on his

behalf and on behalf of all other accused, besides denying the allegations of the petition seeking transfer of the case, these accused would state that the reasons assigned in the affidavit of the petitioner for transfer are not true nor have they offered proper grounds for transfer; that out of the total number of 386 witnesses, only 33 witnesses hail from Coimbatore District and the others are near Dharmapuri and other Districts. Furnishing the list of witnesses and their places of residence, this accused would state that most of the witnesses are hailing from or nearer to Dharmapuri District. He would further allege that the convenience of parties in a sessions case cannot be taken as ground for transfer. This accused would further state that the accused persons are necessary and important parties to be heard in the petition for a just decision to be arrived at in the transfer application. On such grounds, the first accused would pray to pass orders that this Court deems fit and proper in the circumstances of the case.

7. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, it comes to be known that this transfer petition is filed by the father of one of the three girl students of the Tamil Nadu Agricultural University, Coimbatore, who has been burnt alive while travelling in their college bus on an educational tour and while passing through Dharmapuri, the bus in which they were travelling along with a team of students of the said University, was set ablaze by the local AIADMK functionaries and unruly elements who were agitating against the arrest of their leader on being convicted in a criminal case, in which three of the girl students were burnt alive being caught inside the bus besides causing burn injuries to 16 other students and hence the prosecution has filed the charge-sheet against 31 accused and now the trial having commenced in the Court of I Additional Sessions Judge, Dharmapuri at Krishnagiri, all the witnesses who were examined have been treated hostile including P.W.1, the complainant in the said case, in spite of himself being a Government servant serving as Village Administrative Officer and therefore in such an alarming situation, realising that the atmosphere is only congenial and supportive to the accused to tamper the witnesses since admittedly all the accused are from Dharmapuri District and in such a situation,if the remaining part of trial is allowed to continue at the same place, the petitioner would strongly feel that it would not only put an end to the case of the prosecution by tampering the remaining witnesses also and the cause of justice will get defeated and hence the petitioner would pray for the relief extracted supra.

8. During arguments, the learned counsel appearing on behalf of the petitioner, the learned Government Advocate representing respondents 1 and 2 and the learned counsel appearing on behalf of the respondents 3 to 33 who are the accused No.1 to 31 respectively in the Sessions Case, would only lay emphasis on those points which have been extracted supra from the criminal original petition and the counter affidavits filed separately by the respondents 1 and 2 and the respondents 3 to 33 without bringing any new fact or circumstance or the law and therefore this Court is left with no choice but to decide the above criminal original petition on materials made available and upon hearing the learned counsel for all.

9. On the part of the petitioner, no mention need be necessary regarding his concern and interest in the said Sessions Case since his daughter was burnt alive along with two of her college-mates when they

were returning from their study tour for no fault committed on their part and taking stock of the alarming situation created in all the first 22 witnesses examined being tampered with and turning hostile to the case of the prosecution, according to him, since the accused are all from Dharmapuri District and the case is also being held in their own District, most of them being AIADMK functionaries which is the ruling party which is to conduct the prosecution and therefore alleging that the trial was not allowed to be held in a fair and free manner in the present Court i.e. the Court of I Additional Sessions Judge, Dharmapuri at Krishnagiri and finding that the entire atmosphere prevalent in the said District, wherein the ghastly incident was enacted, is in favour of the accused and further feeling strongly that if the remaining trial also is permitted to be carried on in the same Court within the Dharmapuri District,it will be definitely detrimental to the interest of prosecution and hence causing grave concern, he has come forward to file the above criminal original petition seeking not only the transfer of the case from out of the District and seeking that the trial be conducted in any one of the Courts having competent jurisdiction in the District of Coimbatore from where large number of witnesses hail but also praying for a trial de novo with the change of Prosecutor.

10. So far as the witnesses are concerned, it comes to be known that the total number of witnesses are 386 out of whom, 22 witnesses have been examined by the trial Court and all the 22 have been treated hostile including the P.W.1, the very complainant himself, who is a Government Servant serving as the Village Administrative Officer of the place wherein the occurrence is said to have taken place and one of his menials, P.W.2. The petitioner would strongly feel for this miserable plight that since the party to which most of the accused belong, in sympathy of whose leader, who was convicted and sentenced in a criminal case, the offence had been perpetrated, the first respondent/first accused who is the local party functionary pioneering the entire criminal operation of setting fire to the college bus in which the victims travelled and now their party AIADMK having come to power and ruling over the State which has to conduct the prosecution case, is the

piquet situation and in such a scenario, all the 22 witnesses examined including the complainant having miserably failed to make any mark in projecting the case of the prosecution which is not an ordinary failure on the part of the respondents 1 and 2 but also an open challenge posed to the police prosecution in the whole of the State and left with in the same stage or trench it will only become a mockery of the administration of justice in the eyes of the general public.

11. Hence, no wonder, being deeply hurt in the manner the slipshod and eye-wash trial was conducted by the first and second respondents in such a serious case, the father, who lost his beloved daughter, has come forward to bell the cat when even the respondents 1 and 2 are the passive spectators of the ugly drama enacted behind the screen resulting in total failure of police prosecution exposing those who are responsible to serious legal consequences for letting down a case that the respondents 1 and 2 themselves have constructed as though they are not in any manner concerned with the affair and could remain silent spectators is not that much easy and ultimately these respondents along with those who are in responsible positions

in the prosecution of the case will be held answerable in the appropriate legal manner since the law cannot always be circumvented by those officials responsible for projecting a neat case in the manner required under law so as to attain the desired result.

12. It is still more pathetic to note that P.W.1, the complainant himself, who being a Government servant and having lodged the complaint, himself admittedly not only lodging the complaint but also signing the other vital documents marked through him regarding the materials made ready by the Investigating Officer i.e. Exs.A.1 to A.11 and having admittedly signed those documents, he had the audacity and guts to defy his own declaration before the Court stating that he signed the documents in the police station forgetting the fact what he had attested to be true and genuine regarding the contents of the documents and being a witness to the coming into being of the same. It is nothing but an open, deliberate and intentional act of adducing false evidence in judicial proceeding for which he becomes liable to be prosecuted and punished but also for other offences for signing false statements made in declaration which, by law, is receivable as evidence thus causing disappearance of the evidence with intent to screening of the offenders from legal punishment thus becoming prosecuted and punished under Sections 193,197,199 and 201 IPC. P.W.2 being the Village Assistant, he has committed no less an offence than what has been committed on the part of P.W.1.

13. In the light of the above facts and circumstances that are prevalent regarding the conduct of the trial in the said Sessions Case No.118 of 2000 pending on the file of the Court of I Additional Sessions Judge, Dharmapuri at Krishnagiri, the points for consideration are:

1. Whether it is necessary to have a different atmosphere and change of Court in a different District other than in Courts located at Dharmapuri District wherein the alleged ghastly murders of setting on fire three innocent girls and causing burn injuries to 16 other students travelling in the college bus besides completely reducing the bus to ashes was perpetrated by the accused?

2. Whether, prima facie, P.Ws.1 and 2 being responsible Government servants, for openly and deliberately adducing false evidence in judicial proceeding and allegedly signing false statements of declaration causing disappearance of the evidence with intent to screening of the offenders etc. become liable to be prosecuted and punished under Sections 193,197,199 and 201 IPC besides being proceeded against under the disciplinary proceedings? and

3. Whether the first and second respondents herein and all those who are responsible for prosecuting the case need be reprimanded for their total failure to prosecute their case in the manner required under law or at least should they be cautioned about as to how the prosecution case has to be projected without exposing the witnesses being tampered with right under their nose and whether the change of Prosecutor and a trial de nova are necessary in the present circumstances of the case?

14. In consideration of the facts pleaded and in result of the above discussions held and in the above conditions prevalent, this Court

is of the strong view that all the above requirements are to be answered in the affirmative for assuring a fair and free trial to be held and to upheld the magnum of law and the majesty of justice and hence answering the first point framed above, this Court is of the view that neither at Dharmapuri, as it is desired by the accused, but sought to be transferred from that place on the part of the petitioner, nor at Coimbatore as it is requested on the part of the petitioner, the trial need be allowed to continue and since the feasibility, nearness for most of the witnesses, are all abound with Salem town, of which Dharmapuri District was once forming part of, which would serve the peaceful atmosphere. Therefore, the case in the Sessions Case No.118 of 2000 on the file of the Court of I Additional Sessions Judge, Dharmapuri at Krishnagiri is transferred to the Court of I Additional Sessions Judge, Salem, who shall conduct the trial giving priority to this case dealing with the same out of turn and conducting the trial as expeditiously as possible so as to deliver the judgment at the earliest on merits and in accordance with law. The Point No.1 framed above, is answered accordingly.

15. So far as point No.2 is concerned, the Superintendent of Police, Dharmapuri District is directed to entrust the case to a responsible Officer issuing proper directions to register the case against P. W.1 C.Ramasundaram, s/o.Chettiannan, Village Administrative Officer Virupatchipuram, Dharmapuri and P.W.2 S.Samundi, S/o.Samundi, Village Assistant, Virupatchipuram, Dharmapuri for the commission of the offences punishable under Sections 193,197,199 and 201 IPC for adducing false evidence in judicial proceeding, for admittedly signing false statements made in declaration, which, by law, are receivable as evidence thus causing disappearance of the evidence with intent to screening of the offenders from legal punishment as deposed by both P.Ws.1 and 2 as witnesses in the above case for proper investigation including causing of their arrest etc. so as to file the final report in the competent Court of jurisdiction at the earliest.

16. The District Collector, Dharmapuri is directed to initiate such disciplinary proceedings against P.W.1 in this case placing him under suspension with immediate effects pending enquiry for betraying the trust and confidence reposed in him as a Government Servant and for adducing not only false evidence but also admittedly signing false statements made in declaration, which, by law, are receivable as evidence thus causing disappearance of the evidence with intent to screening of the offenders from legal punishment and inflict such punishment and similarly dealing with P.W.2, invoking the relevant provisions of the disciplinary proceeding governing the Village Menials and inflict the punishment on him also, thus taking action against P.Ws.1 and 2 for their delinquencies in accordance with the disciplinary laws. The point No.2 framed above is answered in this manner.

17. Coming to point No.3, no mention need be made that prosecuting a case of such grave nature is the prime responsibility of the respondents 1 and 2 and the lapses such as allowing the prosecution witnesses to be tampered with and making them easy prey, as it has happened in the case of 22 witnesses examined as P.Ws.1 to 22 mentioned supra, is not only disgraceful but shameful as well. The prosecuting police officials just for the simple reason that the accused are the functionaries of the ruling faction, cannot be the passive spectators as though the prosecution case is nobody's child thus betraying the trust and confidence entrusted with them by

law and the system for which they cannot escape punishment. Therefore, if the respondents 1 and 2 are under the impression that they could escape punishment simply betraying the system and the law for the sake of pleasing anyone who is in power, they will have to pay a heavy price when the long arms of law are stretched upon them for the hostile attitude exhibited on the part of the respondents 1 and 2 in particular and all those who are concerned with projecting the case of the prosecution in the manner required under law in general and hence this Court besides taking strong exception of such of the acts of the prosecuting officials, also would reprimand them for their colossal failure in projecting the case of the prosecution and they are cautioned to discharge their duties in total realisation of the trust and confidence entrusted with them by law in order to project the case in a better and effective manner. Therefore, it has become necessary on the part of this Court to direct the Inspector General of Police concerned with CBCID not only to initiate such disciplinary proceeding against the second respondent for permitting the prosecution witnesses to be tampered with freely without affording to them such protection to depose in a healthy atmosphere and for carelessness and punish him in accordance with the disciplinary rules and further to monitor the trial in the said case so as to avoid any tampering of the witnesses throughout the trial henceforth.

18. In this context, it needs to be mentioned that a Special Public Prosecutor has to be appointed in the place of the present Special Public Prosecutor, who has been conducting the case hitherto at Krishnagiri and the new Special Public Prosecutor must be an experienced and well-trained legal practitioner on the criminal side with proven ability and integrity. Therefore, it has become incumbent on the part of this Court to remove the Special Public Prosecutor who was projecting the case hitherto viz. Mr.V.Krishnamoorthy, who was appointed by the Government, further appointing a new Special Public Prosecutor to conduct the trial in the case in his place with such standards mentioned supra. Hence, this Court, in its considered opinion, appoints Mr.R.Srinivasan, a senior lawyer of the Salem Bar as the Special Public Prosecutor in the case in hand to conduct the trial in the case, whose remuneration shall be fixed in accordance with the rules prevalent by the trial Court, which is expected to be liberal in the fixing of the remuneration of the Special Public Prosecutor besides ordering such facilities even providing with such staff or junior lawyers to assist him in the said process on his suggestions further making provision for their remuneration.

19. All the facts and circumstances brought forth in the above paragraphs regarding the events that took place in the name of trial in the Court of I Additional Sessions Judge, Dharmapuri at Krishnagiri in Sessions Case No.118 of 2000, would prove in no uncertain terms that there is colossal failure on all fronts in the prosecution of such a sensational case of vital importance thus defeating not only the purpose of prosecution but making a mockery of the prosecution case by abuse of the very process of the Court ultimately ending up with failure of justice and therefore this Court is of the firm view that the trial held hitherto only becomes liable to be scrapped and a trial de novo ordered for upholding the magnum of law and the majesty of justice and the same is ordered accordingly.

20. For all the discussions held and derivations arrived at, the only irresistible conclusion that this Court could arrive at in the above criminal original petition is to allow the above criminal original petition with the above directions and observations in the foregoing paragraphs.

In result, with the above directions and observations, the above criminal original petition is allowed. Consequently, Crl.M.P.Nos.8048 & 8049 of 2003 are closed.

Index: Yes
Internet: Yes

asvm/Rao

To
1.The Secretary to the Government
of Tamil Nadu,
Home Department,
Fort st.George,
Chennai.

2.The Additional Superintendent
of Police & Chief Investigation
Officer, SIT, CB CID,
Coimbatore Camp at Dharmapuri.

3.The Superintendent of Police,
CBCID, Dharmapuri.

4.The Inspector General of Police,
CBCID, Coimbatore.

5.The Principal Sessions Judge,
Dharmapuri at Krishnagiri.

6.The I Additional Sessions Judge,
Dharmapuri at Krishnagiri.

7.The Superintendent of Police,
Dharmapuri.

8.The Principal Sessions Judge,
Salem.

9.The I Additional Sessions Judge,
Salem.

10.The Superintendent of Police,
Salem.

11.The District Collector,
Salem.

12.Mr.R.Srinivasan,
Senior Lawyer,
Salem.

13.The Public Prosecutor,
High Court, Madras.